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State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

Outgoing
60250005
#3987
R

December 23, 2011

CERTIFIED RETURN RECEIPT
7009 3410 0001 4203 2017

Mr. Kirk Nicholes, Resident Agent
Alton Coal Development, LLC
463 North 100 West, Suite 1
Cedar City, Utah 84720

Subject: Proposed Assessment for State Violation No. N10092, Coal Hollow Mine, C/025/0005,
Task ID #3987, Outgoing File

Dear Mr. Nicholes:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the Assessment Officer for assessing penalties under R645-401.

Enclosed is the proposed civil penalty assessment for the above referenced violation. The violation was issued by Division Inspector, Joe Helfrich, on December 5, 2011. Rule R645-401-600 et. seq. has been utilized to formulate the proposed penalty. By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of this Notice of Violation has been considered in determining the facts surrounding the violation and the amount of penalty.

Under R645-401-700, there are two informal appeal options available to you:

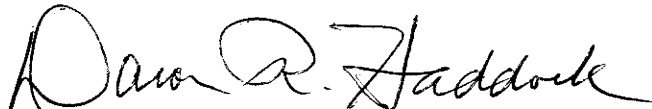
1. If you wish to informally appeal the fact of this violation, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.



2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph 1, the Assessment Conference will be scheduled immediately following that review.

It is our understanding that a request for an Informal Conference has already been scheduled for January 17, 2012 at 2:00 pm. We look forward to reviewing this violation with you at that time. If you have any questions, please call me at (801) 538- 5325.

Sincerely,

A handwritten signature in black ink, reading "Daron R. Haddock". The signature is fluid and cursive, with the first name "Daron" and last name "Haddock" clearly legible.

Daron R. Haddock
Assessment Officer

Enclosure

cc: OSM Compliance Report
Suzanne Steab, DOGM
Accounting, DOGM
Price Field Office

O:\025005.COL\WG3987\PROPOSED ASSESSMENT10092.DOC

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See Reverse for Instructions

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**WORKSHEET FOR ASSESSMENT OF PENALTIES
DIVISION OF OIL, GAS & MINING**

COMPANY / MINE Alton Coal Development/ Coal Hollow Mine

PERMIT C/025/0005 NOV / CO # N 10092 VIOLATION 1 of 1

ASSESSMENT DATE December 23, 2011

ASSESSMENT OFFICER Daron R. Haddock

I. HISTORY (Max. 25 pts.)

- A. Are there previous violations, which are not pending or vacated, which fall one (1) year of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS
<u>NOV #10078</u>	<u>March 9, 2011</u>	<u>1</u>
<u>NOV #10084</u>	<u>May 2, 2011</u>	<u>1</u>
<u>NOV #10085</u>	<u>May 25, 2011</u>	<u>1</u>

1 point for each past violation, up to one (1) year

5 points for each past violation in a CO, up to one (1) year

No pending notices shall be counted

TOTAL HISTORY POINTS 3

II. SERIOUSNESS (Either A or B)

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or HINDRANCE (B) violation? Hindrance

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS ____

PROVIDE AN EXPLANATION OF POINTS:

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS ____

PROVIDE AN EXPLANATION OF POINTS:

B. HINDRANCE VIOLATION (Max 25 pts.)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? Actual
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS 13

PROVIDE AN EXPLANATION OF POINTS:

*** *The wildlife enhancement and mitigation plan for the mine was not followed. Because of this, the Division's inspector and Biologist could not assess the impacts to wildlife as a result of mining during the 2011 year. Sage grouse were to have been trapped during 2011, but the needed permits were not issued by the Division of Wildlife Resources. While this may have contributed to the trapping failure, it does not excuse the Operator from following his plan. The plan also called for the Operator to provide funding for the removal of pinyon/juniper trees from the sage-brush corridor providing connectivity between two sage grouse leks. Again the Operator failed to provide the funding and the project was not completed. The plan also calls for an employee awareness program that would include the DWR. While an awareness program may have been completed, DWR was not involved. It appears that there is a lack of communication and follow-through on the wildlife enhancement and mitigation*

plan. A prudent operator would have notified the Division and discussed alternative options in order to acquire the needed information or alter the mitigation plan. The Operator submitted some information through its attorney, Denise Dragoo, indicating that issuance of the NOV was premature and that it should not have been issued prior to the annual report due date. It was also stated that DWR did not grant Alton the required permit necessary for the 2011 sage grouse trapping and monitoring program. Some of the problems can be attributed to the DWR and the inability to acquire the trapping permits, but clearly half of the blame can be assigned to the Operator not communicating with the Division. For this reason I am assigning hindrance at the mid-point of the range.

TOTAL SERIOUSNESS POINTS (A or B) 13

III. NEGLIGENCE (Max 30 pts.)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, or the failure to abate any violation due to the same? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE: Ordinary Negligence

ASSIGN NEGLIGENCE POINTS 10

PROVIDE AN EXPLANATION OF POINTS:

**** According to the information in the inspector statement, the operator was indifferent to the DOGM regulations. Special Condition #6 of the permit requires cooperation with the Division as well as other state and federal wildlife agencies. When one piece of the enhancement plan seemed to stall, there was no attempt to follow through or explore other options. The Operator appears to be negligent in communicating with the Division and the other agencies. Points are assigned in the mid to upper part of the ordinary negligence range.*

IV. GOOD FAITH (Max 20 pts.)

(Either A or B)

(Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

Easy Abatement Situation

- | | | |
|---|---|-------------|
| X | Immediate Compliance | -11 to -20* |
| | (Immediately following the issuance of the NOV) | |
| X | Rapid Compliance | -1 to -10 |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | 0 |
| | (Operator complied within the abatement period required) | |
| | (Operator complied with condition and/or terms of approved Mining and Reclamation Plan) | |

*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- | | | |
|---|---|-------------|
| X | Rapid Compliance | -11 to -20* |
| | (Permittee used diligence to abate the violation) | |
| X | Normal Compliance | -1 to -10* |
| | (Operator complied within the abatement period required) | |
| X | Extended Compliance | 0 |
| | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) | |
| | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan) | |

EASY OR DIFFICULT ABATEMENT? _____

ASSIGN GOOD FAITH POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

****Good faith will be evaluated upon termination of the violation*

V. ASSESSMENT SUMMARY

NOTICE OF VIOLATION # N 10092

I.	TOTAL HISTORY POINTS	<u>3</u>
II.	TOTAL SERIOUSNESS POINTS	<u>13</u>
III.	TOTAL NEGLIGENCE POINTS	<u>10</u>
IV.	TOTAL GOOD FAITH POINTS	<u>-</u>
	TOTAL ASSESSED POINTS	<u>26</u>

TOTAL ASSESSED FINE \$ 660